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ELMBURG, ERIC ELMBURG, ROCKY
FLICK, CRESTWOOD HOLDINGS, INC. and
BERGAN, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL MONTGOMERY,
Plaintiff,

v.

WAL-MART STORES, INC.;
KINDERHOOK INDUSTRIES II, L.P.;
KINDERHOOK INDUSTRIES, L.L.C.;
KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive,

Defendants.

Case No.: 12CV3057 JLS (DHB)

**DEFENDANT BERGAN LLC'S
NOTICE OF MOTION AND
MOTION TO DISMISS FOR
LACK OF STANDING (12(B)(1)),
FAILURE TO STATE A CLAIM
(12(B)(6)) AND MOTION TO
STRIKE (12(F))**

Date: April 11, 2013
Time: 1:30 p.m.
Ctrm: 3B
Judge: Hon. Janis L. Sammartino

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on April 11, 2013, at 1:30 p.m., or as soon
3 thereafter as this matter may be heard, in Courtroom 3B of the above Court,
4 Defendant BERGAN, LLC ("Bergan") will and hereby does move the Court for an
5 order dismissing the claims against him in the above styled action pursuant to
6 pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction, Fed. R. Civ. P.
7 12(b)(1) for lack of standing, pursuant to 12(b)(6) for failure to state a claim, and for
8 an order striking Plaintiff's claim for punitive damages and for attorneys' fees and
9 costs pursuant to Fed. R. Civ. P. 12(f).

10 Bergan's motion is based upon this Notice and Motion and the accompanying
11 Memorandum of Points and Authorities, the Declaration of Eric Elmburg, Manager of
12 Bergan, LLC, and the pleadings and other papers on file with the Court.
13

14 Dated: March 6, 2013

DUANE MORRIS LLP

15 By: /s/ Patricia Hollenbeck
16 Patricia P. Hollenbeck
17 Rebecca G. Church
18 David E. Jones
19 Attorneys for JOHN ELMBURG, ROBERT
20 ELMBURG, ERIC ELMBURG, ROCKY
21 FLICK, CRÉSTWOOD HOLDINGS, INC.,
22 and BERGAN, LLC
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